

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL E. JACQUES,
Plaintiff,

v.

M. DOBBS, et al.,
Defendants.

No. 2:24-cv-00478-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in this action brought pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has also filed an application to proceed in forma pauperis. ECF No. 3. Because of discrepancies between plaintiff's IFP application and institutional trust account statement, the court ordered plaintiff to show cause why this action should not be dismissed under 28 U.S.C. § 1915(e)(2). ECF No. 6.

Despite a 60-day extension of time, plaintiff has not responded to the order to show cause. See ECF No. 8. "Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). "In determining whether to dismiss a case for failure to comply with a court order the district court must weigh five factors including: '(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of

1 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
2 and (5) the availability of less drastic alternatives.” *Ferdik*, 963 F.2d at 1260-61 (quoting
3 *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)); *see also Ghazali v. Moran*, 46
4 F.3d 52, 53 (9th Cir. 1995).

5 In determining to recommend that this action be dismissed, the court has considered the
6 five factors set forth in *Ferdik*. The first two factors favor dismissal. The order to show cause
7 was issued several months ago and plaintiff has not responded. Plaintiff’s failure respond
8 suggests that he has abandoned this action and that further time spent by the court thereon will
9 consume scarce judicial resources in addressing litigation which plaintiff demonstrates no
10 intention to pursue.

11 The fifth factor also favors dismissal. The court has granted plaintiff ample time to
12 respond to the order so that the court could determine the propriety of granting in forma pauperis
13 status and move the case forward. The court finds no suitable alternative to dismissal of this
14 action.

15 As defendants have not yet been served, the third factor does not weigh heavily for or
16 against dismissal, although the delay of any litigation may prejudice a party due to the potential
17 that evidence may be lost. The fourth factor, public policy favoring disposition of cases on their
18 merits, weighs against dismissal of this action as a sanction. However, for the reasons set forth
19 *supra*, the first, second, and fifth factors support dismissal and the third factor does not mitigate
20 against it. Under the circumstances of this case, those factors outweigh the general public policy
21 favoring disposition of cases on their merits. *See Ferdik*, 963 F.2d at 1263.

22 Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a district
23 judge to this action. It is further RECOMMENDED that the case be dismissed without prejudice
24 pursuant to Federal Rule of Civil Procedure 41(b).

25 These findings and recommendations are submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
27 after being served with these findings and recommendations, any party may file written
28 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
2 objections shall be filed and served within fourteen days after service of the objections. The
3 parties are advised that failure to file objections within the specified time may waive the right to
4 appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5
6 Dated: February 6, 2025


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE